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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 213

HELMUT EISENTRAGER,

Petitioner

v.

WILLIAM P. ROGERS, Attorney General of the United States,

Respondent

REPLY BRIEF

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WILLIAM P. ROGERS, Attorney General of the United States,

Respondent

REPLY BRIEF

Respondent's only argument in response to petitioner's position that respondent's actions are reviewable under the Administrative Procedure Act is the language of two provisions of the Trading with the Enemy Act: (1) section 7, stating that the sole relief and remedy of any person having a claim to vested property is that contained in the Act, and (2) section 33, establishing a two year period after vesting for the filing of court actions for the return of property under section 9 of the Act.

Section 32 of the Trading with the Enemy Act, under which respondent chose to consider petitioner's claim rather than under section 9, provided a new administrative remedy for the return of vested property, under standards entirely different from those in section 9. Section 32 was enacted into law in August 1946, subsequent to the Administrative Procedure Act. Section 12 of the Administrative Procedure Act provides that:

". . . no subsequent legislation shall be held to supersede or modify the provisions of this Act, except to the extent that such legislation shall do so expressly."

There was nothing in the act enacting section 32 of the Trading with the Enemy Act excluding judicial review under the provisions of the Administrative Procedure Act of the administrative actions taken by respondent thereunder, and therefore by the express terms of the Administrative Procedure Act quoted above judicial review exists.

Section 7 of the Trading with the Enemy Act was enacted in 1917 as part of the original World War I statute. Respondent relies upon an asserted implication that section 32, enacted 29 years later, was intended by Congress to be made subject to section 7. Even if the legislative history of section 32 supported such an implication, which is not the case, and is not even argued by respondent, such an implication would not comply with the requirement of section 12 of the Administrative Procedure Act that only an *express* exemption in any subsequent legislation could have the effect of removing it from the applicability of the judicial review provisions.

In any event, section 7 spoke of "sole relief and remedy", which related to original court actions rather than review of administrative determinations, and this 1917 provision did not foreclose judicial review as to the legality or constitutionality of administrative actions of respondent under the broadened relief provisions of the 1946 Act establishing an entirely new procedure for the consideration of claims under section 32.

Section 33, the other provision of the Trading with the Enemy Act on which respondent relies, established a time limit for statutory suits under section 9 of that Act. This section was also enacted in August 1946, subsequent to the Administrative Procedure Act, and said nothing whatever as to limitation on judicial review of

administrative actions, under section 32 or under section 9, where respondent likewise has authority to consider claims administratively, in addition to the jurisdiction of the federal courts to entertain original suits.

Here again, there is nothing even asserted by respondent in the legislative history to give rise to the implication that Congress intended to cut off judicial review under the Administrative Procedure Act, and far less the express exemption from review required under section 12 of that Act.

According to the position of respondent, Congress intended to free him from any possibility of review of his actions in dealing with property summarily seized under the war power, with the single exception of the relief provided under section 9. That section is quite restricted in its applicability, and the principal source of relief, under which the great majority of claims for the return of property seized during World War II have been and are being considered, is that provided by section 32. The immunity from judicial review for which respondent argues would give him final and unreviewable authority over thousands of claims involving millions of dollars of property. Such unlimited authority leads to such flagrant disregard of law as occurred in this case, and the provisions for judicial review of the Administrative Procedure Act were enacted for the specific purpose of restricting such unreviewable authority to situations where Congress felt it necessary to make specific exception.

In the past, most of the unsuccessful claimants under section 32 have been rendered financially unable to support a court action to the point of reaching this Court, since they were subject to Nazi pillage and persecution, and their property in this country was taken by respondent. Fortunately, however, petitioner has been able to do so, and, it is submitted, this Court should take

the opportunity to consider the serious and far-reaching issues presented.

Respectfully submitted,

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